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In the Supreme Court of the United States

OCTOBER TERM, A. D. 1934.

No. 292

In the Matter of MINNIE LERNER, Bankrupt.

MINNIE LERNER,

Petitioner,

vs.

FIRST WISCONSIN NATIONAL BANK OF MILWAUKEE, WISCONSIN, JAKE RAKITA, SARAH RAKITA, HARRY BLUMENFELD and DORA BLUMENFELD,

Respondents,

On Writ of Certiorari
To The United States Circuit Court of Appeals
for the Seventh Circuit.

BRIEF FOR THE PETITIONER.

Opinion Below.

There was no opinion in the District Court. The opinion of the Circuit Court of Appeals (R. 34-36) is reported in 70 Fed. (2d) 938.

Jurisdiction.

The judgment of the Circuit Court of Appeals was entered on May 8, 1934 (R. 37). A petition for a rehearing was denied on June 19, 1934, and a stay of the mandate was granted on the same day (R. 38). The jurisdiction of this court is invoked under Section 240 A of the Judicial Code as amended by the Act of February 13, 1925.

Statement of Facts.

The petitioner, Minnie Lerner, was adjudicated a bankrupt on May 22, 1933, and on October 6, 1933, made application for a discharge in bankruptcy. Notice to creditors was given on October 10, 1933, reciting, that the bankrupt had filed her petition for discharge, that the same would be heard before the court on the 18th day of November, 1933, at ten o'clock in the forenoon, and that all creditors may appear at said time and place and show cause why the same should not be granted (R. 2).

On November 17, 1933, the Respondent, First Wisconsin National Bank of Milwaukee, Wisconsin, filed an appearance in opposition, and a written request to the court for an extension of time within which to file specifications, to November 28, 1933 (R. 3). On November 18, 1933, the other Respondents entered their appearances in open court to oppose the discharge in bankruptcy (R. 3-4). Neither bankrupt nor her attorneys appeared before the court on November 18, 1933, the return day of the petition for discharge (R. 32). The record shows that on November 28, 1933, an order granting objecting creditors time to file specifications was filed (R. 4), and on that date written specifications of objections were filed for Respondents (R. 4 and 9).

On December 15, 1933, bankrupt moved to strike the specifications because the same had not been filed within the time limited by General Order 32 (11 U. S. C. A. Sec. 53), as amended April 17, 1933 (R. 11), which motion was denied by the District Court (R. 12) on December 16, 1933.

An appeal, from the order denying this motion, was allowed by the Circuit Court of Appeals for the Seventh Circuit on January 4, 1934 (R. 18). Respondents moved to dismiss the appeal (R. 29-31), which motions were not granted, the cause being considered on the merits (R. 33), and the District Court order denying bankrupt's motion to strike the specifications was affirmed by the Circuit Court of Appeals. The Court's opinion is set forth at R. 34, and judgment at R. 37. The petition for re-hearing being denied, a stay of the mandate was granted (R. 38).

Questions Presented.

1. Has the District Court authority to extend the time for filing of specifications of objections beyond the time of appearance in opposition, and beyond the date set for showing cause against a charge of bankruptcy under General Order 32 (11 U. S. C. A. Sec. 53), as amended, by the Supreme Court on April 17, 1933?

2. Does the failure of the bankrupt to be present or represented, on the day when creditors are required to show cause in opposition to application for discharge, constitute such acquiescence as a matter of law, as to estop her from challenging the District Court's authority to extend the time to file specifications?

Specification of Errors to be Urged.

The Circuit Court of Appeals erred:

(1) In holding that General Order 32, as amended, gave the District Court any discretion to extend the time to file specifications.

(2) In holding that the Bankrupt's absence or failure to object, on the show cause date of hearing for discharge, constituted such acquiescence as to preclude her from questioning the propriety of the order extending the time.

SUMMARY OF ARGUMENT.

I.

Historical survey of General Order 32 shows that the District Court had discretion to enlarge the time for filing specifications for a period of about sixty years, commencing with General Order 24, under the Bankruptcy Act of 1867, to the amendment of General Order 32, under the Bankruptcy Act of 1898, on April 17, 1933. Since the amendment of 1933, the courts have held that the District Court lost the right to extend the time to file specifications. Decisions prior to the amendment are not helpful in construing the amended General Order, as those cases dealt with the provision of the order granting the right to enlarge the time for filing specifications.

The opinion of the court below is attempted to be justified on the general equity power of the court, not in endeavoring to construe the order as amended.

General Orders have the same force and effect as the Act itself, and are to be construed by the same rules of construction. Amendment of Orders in bankruptcy, generally,

indicate the intention of the Supreme Court to take away the discretion of the District Court to enlarge or shorten the time for filing specifications.

It is apparent that changes in the Order were intended by the Supreme Court, and in construing the Order, all changes must be given their plain and natural meaning. Permitting the filing of specifications after the return day is not following the plain language of the Order.

The amended Order can only be construed as intending to deprive the courts of the discretion they formerly had in connection with filing specifications. To hold otherwise would be to put in by construction that which the court left out by amendment. The natural construction to the amendment which gives effect to all changes and omissions is that the filing of specifications must be made concurrently with the appearance in opposition, that the court no longer has any discretion to extend the time for filing specifications. General Order 37 does not give the District Court any authority to extend the time for filing specifications, as this Order has reference to plenary suits at law and equity, and does not apply to proceedings in bankruptcy.

II.

Court's conclusion that bankrupt acquiesced in court's making order extending time is based on erroneous statement of fact. Neither bankrupt, nor her attorneys, appeared in court on the return day, had no knowledge that Respondents would ask for an extension, or that the Court would grant it, consequently there could be no acquiescence. Bankrupt is not responsible for Order made contrary to law. Error was wholly on Respondent's part. Bankrupt is not charged with duty of exercising supervisory control over the court or Respondent's counsel, to assure proper orders being entered.

Ignorance of the amendment is no excuse for granting an extension of time, nor should the bankrupt be charged with acquiescence therefor even though bankrupt knew of the change in the Order.

Bankrupt's attendance on the return day is not required by the Bankruptcy Act. The bankrupt is only required to be present upon the hearing. This contemplates a hearing after issue is joined, and not the return day.

ARGUMENT.

I.

The 1933 amendment to General Order 32 removes the discretion theretofore vested in a a Judge to enlarge the time for the filing of specification of objections to a discharge.

(a)—Historical survey of General Order 32 suggests change intended.

Inasmuch as General Order 32, as amended, was promulgated by the Supreme Court, it would seem superfluous to argue the rules of construction which should be followed by the court in considering its own order, except, that the disregard of such rules form the basis of petitioner's specification of errors.

An historical survey of General Order 32 is instructive in showing that the Supreme Court intended to take away the District Court's discretion in extending the time for filing specification of errors. The Bankruptcy Act of 1867 provided with reference to discharge in bankruptcy, General Order 24 as follows:

"Opposition to Discharge. A creditor opposing the application of a bankrupt for discharge shall enter his appearance in opposition thereto on the day when the creditors are required to show cause, and shall file his specification of the grounds of his opposition, in writing, within ten days thereafter, *unless the time shall be enlarged by order of the District Court* in the case, and the Court shall thereupon make an order as to the entry of said case for trial on the docket of the District Court, and the time within which the same shall be heard and decided."

We call the Court's attention to the phrase in the above General Order which we have italicized.

In 1898 the United States Supreme Court adopted, with reference to opposition to discharge, General Order 32, which read as follows:

"A creditor opposing the application of a bankrupt for his discharge, or for the confirmation of a composition, shall enter his appearance in opposition thereto on the day when the creditors are required to show cause, and shall file a specification in writing of the grounds of his opposition within ten days thereafter, *unless the time shall be enlarged by special order of the Judge.*"

Prior to the amendment of 1933, only one minor change was made in General Order 32. By amendment of this Order promulgated June 4, 1917, the last clause was amended to read as follows: "unless the time shall be shortened or enlarged by special order of the Judge." 244 U. S. 641.

General Order 32, before the 1933 amendment, read as follows:

> "A creditor opposing the application of a bankrupt for his discharge, or for the confirmation of a composition, shall enter his appearance in opposition thereto on the day when the creditors are required to show cause, and shall file a specification in writing of the grounds of his opposition *within ten days thereafter, unless the time shall be shortened or enlarged by special order of the Judge.*"

On April 17, 1933, this General Order was amended, effective as of April 24, 1934, and now reads:

> "A creditor opposing an application for discharge, or for the confirmation of a composition or extension proposal, shall enter his appearance in opposition thereto on the day when the creditors are required to show cause, *and shall at the same time file a specification in writing of the grounds of his opposition.*"

For a period in excess of sixty years the Supreme Court granted a Federal Judge discretion to enlarge the time for filing specifications, and under these General Orders, the courts have been liberal in granting extensions, beyond the show cause date.

In re Rerat, 14 Fed. (2d) 607, affirmed 28 Fed. (2d) 607 (C. C. A. 8th Cir.).

Schlesinger vs. Phillips, 36 Fed. (2d) 191.

In re Nathanson, 152 Fed. 585.

In re Brecher, 4 Fed. (2d) 1001.

(b)—Decisions since 1933 amendment confirm changes intended.

Since the 1933 amendment, at least three District Courts, and the Second Circuit Court of Appeals, held that the amended order took away from the District Court the discretion to extend the time for filing specifications. These cases, following proper rules of construction, reached the conclusion contended for by petitioner. The cases are as follows:

Matter of Harley M. Hodges, 4 Fed. Supp. 804, affirmed 70 Fed. (2d) (C. C. A. 2nd Cir) 243.
Matter of Cornelius J. Corcoran, 4 Fed. Sup. 988.
In re Gorman, Dist. Court, Western District, So. Carolina. No official reporter citation available. Found under Section 3072, Bankruptcy Law Service, Commerce Clearing House Inc.

These courts assumed rightly that the Supreme Court intended a change in General Order 32, and their decisions gave full effect to the changes in the order.

(c)—Prior decisions not helpful in construing amended order.

Decisions prior to the amendment referred to by the court, and by respondent, holding that the court could enlarge the time for filing specifications, must be read in light of the fact that General Order 32, prior to the amendment, specifically provided that ten days after appearance would be allowed for filing specifications "unless the time should be shortened or enlarged by special order of the Judge." That clause has now been omitted, and accordingly to apply prior decisions is to beg the question whether such decisions are now applicable notwithstanding the changes in the order. To hold that such decisions are now

applicable would be an utter disregard of the plain intent of the General Order, as amended.

The opinion of the court below indicates no intent to give effect to the changes in the General Order. The court stated its opinion of what the amendment did not do. It has not indicated what it thought the Supreme Court intended by amending the order. The court endeavors to justify its conclusion by reciting that a court of bankruptcy is a court of equity; that the Bankruptcy Act is administered by such a court, and concludes that specifications being pleadings, the time to file may be extended. As a matter of fact, the court should have determined whether or not the amendment put General Order 32 in a mandatory or directory class of orders. The Bankruptcy Act has placed various limitations on the District Courts which restrict their general powers. For example, there are limitations on the time for an appeal; limitations of the time within which creditors may file claims; limitations within which petitions for discharge may be filed; limitations within which petitions to revoke a discharge may be filed. The class to which General Order 32 belongs depends upon the construction to be placed on it, rather than upon the general rule relating to the discretion of the court to grant extensions of time to plead.

General Orders in Bankruptcy are to be regarded as the act itself, from which it follows that the same rules for construing an act should be applied in construing General Orders. General Orders are regarded as is the statute itself, and have the same force as a provision of the statute.

Matter of Brecher, 4 Fed. (2d) 1001.
Wilkenson vs. Waters, 292 Fed. 395.

(d)—Amendments, generally, of orders in bankruptcy show that change was intended.

Statutes, or in this case, General Orders, may be either directory or mandatory. Whether they are one or the other depends on the intent of the rule-making body. A study of the changes made in General Orders by the order of April 17, 1933, discloses that one of the obvious intents of the Supreme Court was to accelerate proceedings in Bankruptcy. Aware of existing economic conditions and heeding the general clamor that debtors be relieved by direct and unhampered administration of statutes already extant for their benefit as well as by the immediate new legislation then being formulated, the Supreme Court made these changes to remove from Bankruptcy practice certain delays which in normal years had not seemed too great. (See Article in May, 1933, issue of American Bankruptcy Review, Vol. IX, 279.) In addition to the change in General Order 32, the following significant amendments were made by the same Order of April 17, 1933:

1. A new section (4) was added to General Order 12 providing that Referees should call the first meeting of creditors in involuntary proceedings begun by petition without schedules immediately upon the petitioner's filing a verified list of creditors without awaiting the filing of schedules.

2. Section 2 of General Order 17 was amended to provide that the trustee should make his report of articles set off to bankrupt within five days of his appointment "unless further time is granted by the court." Prior to this amendment, the trustee was allowed twenty days.

3. This same section of General Order 17 was further amended by providing that creditors' objection to this re-

port should file exceptions thereto within ten days "unless further time is granted by the court." Before this change creditors were allowed twenty days.

4. Section 5 of General Order 17 was amended to provide that the referee should cause the trustee to be served with an order to show cause why he should not be removed for failure to file reports three days before the hearing thereon. Formerly seven days notice of such show cause order was required.

It is only logical to assume that in furtherance of its intent to hasten proceedings the Supreme Court also made the change in General Order 32.

The Supreme Court in its Order of April 17, 1933, clearly evidenced its intention as to the existence or nonexistence of discretionary power in the lower courts to enlarge a specified time. Where the Court intended that discretion which formerly did not exist should be created, that discretion was specifically provided for. (See General Orders V, 3; XVII, 2, as amended April 17, 1933.) Where the intent was that the same discretion which had existed should continue, it was retained. (See General Order XXI, 3, prior to amendment of April 17, 1933, and after said amendment.) Where it was intended that the discretion, which had been conferred under General Order 32, should exist no longer, the clause conferring discretionary power was omitted.

General Order 32 as amended, compared with the order prior to amendment, shows two distinct changes: *First,* the amended order states that creditors shall file specifications *at the same time* as the appearance in opposition upon the day creditors are to show cause, instead of within ten days thereafter; and *Second,* the provision "unless

the time be shortened or enlarged by special order of the Judge" has been entirely omitted in the amendment.

The Circuit Court of Appeals failed to give any effect to these changes. No rules of construction available are applied or discussed in the opinion, no reason stated why they do not apply, and no statement is made as to what rules of construction were followed in arriving at the conclusion that the court did.

(e)—Presumption that changes in General Order were intended by amendment.

That changes were intended by the Supreme Court must be inferred from the changes in language made by the amendment. As stated in *Crawford vs. Burke,* 195 U. S. 176, at 190:

> "Our own view, however, is that a change in phraseology creates a presumption of a change in intent."

In *Louisville & Nashville Railroad Co. vs. Mottley,* 219 U. S. 467, at 475, in respect to the change in the act there considered, the court says:

> "We cannot suppose that this change was without a distinct purpose on the part of Congress."

To apply the language of 25 *R. C. L.* at 1051, to the instant order, rather than to an act of the legislature as there dealt with, the Supreme Court must be presumed to have known both the language employed in former orders, and the judicial construction placed upon them; if in the amended order on the same subject, it uses different language in the same connection, the courts must presume that a change of the law was intended.

Where the statute is plain and unambiguous in its terms, the courts must enforce the law as they find it.

Pirie vs. Chicago Title & Trust Co., 182 U. S. 438, at 452. The words "at the same time" in General Order 32 clearly appear to be plain and subject to but one construction. These words cannot be regarded as superfluous or meaningless. Regard must be had for all words used by the court, and so far as possible give effect to them. *Louisville, etc., vs. Mottley, supra,* at 475, citing *Market vs. Hoffman,* 101 U. S. 112, at 115, where the court states:

> "It is a cardinal rule of statutory construction that significance and effect shall if possible be accorded to every word. As early as in Bacon's Abridgment Sec. 2, it was said that 'a statute ought upon the whole to be so construed that if it can be prevented no clause, sentence or word shall be superfluous, void or insignificant.'"

(f)—Effect to be given amendment by opinion of lower court is not clear.

The Court of Appeals, without discussing the point, fails to give effect to the plain meaning of the words "at the same time," and in addition fails to give significance to the omission of the prior provision for the ten day period which the words "at the same time" substituted. By extending the time for filing specifications, they are not filed at the same time as the appearance in opposition, and are filed at different times. The court's construction of the words "at the same time" means the filing of specifications at different times, and is an impossible construction of the language used by the Supreme Court in this order.

The Court of Appeals states that the amended order does not prescribe the procedure in case objections are made within the designated time, suggesting the case where objections are filed in time, but specifications are not. The absence of such provision should have persuaded

the court that the order as amended did not contemplate the filing of specifications beyond the return day, but must be at the same time with the objection to the discharge as interposed. By the requiring of filing of specifications at the same time as the appearance, gives effect to all words of the order as amended, and the omissions from the previous order.

As stated in *Pirie vs. Chicago Title & Trust Co.*, 182 U. S. 438, at 448, in respect to the omission of a phrase in a new act which had previously appeared in a former act:

> "The words in italics are omitted from the Act of 1898. Was the omission without purpose? The omission of a condition is certainly not the same thing as the expression of a condition. Was it left out in words to be put back by construction? Taken from the certainty given by prior use, and prior decisions and committed to doubt and controversy? There is a presumption against it. When the purpose of a prior law is continued, usually its words are, and an omission of the words implied an omission of the purpose."

Had the Supreme Court intended to permit the court to retain the discretionary power to extend time, it would have inserted a provision to that effect, particularly since such provision was already contained in Order 32, as it stood before the amendment. The fact that it was deliberately omitted would seem to allow and practically compel only one conclusion, and, that is, that it was intended to deprive the courts of the discretion they had formerly exercised in connection with the filing of specifications. To hold, that in spite of the amendment, the court still retains a discretion to extend time would be to construe the amended order as if it contained the very provision it was

omitting. As quoted above "was it left out in words to be put back by construction?" Obviously not. As indicated in *Guarantee Title, etc., vs. Title Guaranty, etc.*, 224 U. S. 152, at 160, a change in provisions in a certain respect indicates a change of purpose in that respect.

(g)—Language of order is clear.

It has been suggested by respondents below, and by *Remington*, (4th Ed. Sec. 3201), and in effect by the court below, that such provision was omitted because unnecessary. This is contrary to the rules of construction above mentioned, and it is significant that while the provisions for enlarging time was omitted in amended Order 32, that General Orders V-3, XVII-2 and XXI-3 and L-3 and 4 (11 U. S. C. A. Sec. 53), in express language, contain specific provisions that specified action should be limited "unless further time * * * is granted by the court." The failure to so specify in Order 32 become significant, and cannot be laid either to an intention of the Supreme Court to economize on words, or that it was careless in neglecting to add such provision; nor can it be argued that the phrase was omitted because there is a general power in the courts to extend the time, for upon the same assumption it could have eliminated the provision for further time as set out in the orders mentioned above. The obvious and natural construction to the amendment, which gives effect to all changes and omissions, is that the filing of specifications is to be made concurrently with the appearance in opposition, and that the court no longer has any discretion to extend the time for filing specifications to a date beyond that upon which the creditors are required to show cause against the discharge.

(h)—General Order 37 has no application to proceedings in bankruptcy.

Respondent has likewise urged, in the court below, that General Order 37 authorized the District Court to vary the time within which to file specifications. This intention cannot be sustained because the courts have uniformly held that this section has no application to proceedings in bankruptcy.

International Harvester Co. vs. Carlsen, (C. A. A. 8th) 217 Fed. 736 at 739.

In re Brookstone Mfg. Co., (C. C. A. 1st) 239 Fed. 697, at 699.

Daniel vs. Guaranty Trust Co., 284 U. S. 602.

II.

The court should not have held that bankrupt acquiesced in an extention of time to file specifications.

(a)—Court's conclusion is based on erroneous assumption of fact.

The Court states in its opinion, and discusses, at length, the fact that bankrupt's counsel was in court on the return day of the order to show cause for the discharge, and that bankrupt's counsel did not object to the order extending time to file specifications. The record does not disclose that either the bankrupt or her counsel were present in court on the day, and the fact is that they were not. Contrary to the statement in the opinion, neither was present to either object or acquiesce to the order then being made. The affidavit of one of respondent's attorneys (R. 32) unequivocably substantiates this fact.

(b)—Knowledge is a pre-requisite to acquiescence.

The record does not disclose, nor is it a fact, that either the bankrupt or her attorney knew on the return day or prior thereto, that an order extending the time to file specifications would be asked for or be granted. Even though they acquired such knowledge, the earliest possible moment after the return day, it would have been too late to have made any objection, assuming for argument, that there was any duty on their part to object. As stated in *Pence vs. Langdon,* 99 U. S. 578 (Italics ours):

> "Acquiescence and waiver are always questions of fact. There can be neither without *knowledge.* The terms import this foundation for such action. *One cannot waive or acquiesce in a wrong, while ignorant that it has been committed.* Current suspicion and rumor are not enough. There must be knowledge of facts which will enable the party to take effectual action."

In addition to having knowledge of the order, it would also seem to be essential that bankrupt should know that the order for extension to be entered was erroneous. There is nothing in the record to indicate that bankrupt or bankrupt's counsel had knowledge of the fact that the filing of specifications was required on the same day as the appearance and the implications from the citation above set forth would indicate that the acquiescence in such order by bankrupt, would necessitate her having knowledge of the law applicable to the order as well as of the fact of its entry.

The Circuit Court emphasizes bankrupt's failure to object. Respondents not only failed to object but moved for the entry of the order upon which the appeal was based. The fact of the matter is, that the situation in this case arose by error, probably, because of the recentness of the amendment.

(c)—There must be duty to object before there can be acquiescence.

Nothing was done by the bankrupt to mislead either the court or objecting creditors. They were free at all times to do whatever they thought was proper under the circumstances; neither advised nor influenced by the bankrupt. Any error in their judgment was wholly their own responsibility. It is not the only situation in which rights of litigants have been affected through mistakes, excusable or otherwise, of attorneys. There is no reason why bankrupt should be charged with the duty of exercising a supervisory control over the court, or over the objecting creditors' counsel, to see that they conducted the business on hand properly.

Even though bankrupt had knowledge of the facts and was present to object, the lower court's apparent conclusion, that bankrupt's silence amounted to acquiescence, should not be accepted as well founded. In the case of *Spelke vs. Shaw*, 117 Connecticut 639, the Supreme Court at page 646, answered such argument as follows:

> "The most that this record shows is failure of the defendants to object at or before the expiration of the winter session, to further consideration of the case, and to rendition of judgment thereafter. Implications from silence or inaction, however, import some duty or occasion to speak or act, and in order to imply consent that rendition of judgment in the present case might be deferred beyond the limit of time imposed by statute, there must be found to exist some obligation on the part of the defendants or their counsel either seasonably to admonish the trial judgment that the statute must be complied with, or after the second session and before judgment, to interpose objection to its entry thereafter. We find

no justification for so far extending the duty of a party or his counsel."

In *Investment Registry vs. Chicago & M. E. R. Co.*, 212 Fed. 594 (C. C. A. 7th), at 604; though not precisely in point, the court held that appellant, even after the entry of an order setting aside a sale because of alleged stifling of competitive bidding, was not held to have deemed to have waived the right to object to such order by appealing therefrom, nor was it to be taken as an admission of wrong-doing, even of inadequacy of the bid. There was more than silence in that case, an affirmative act which might have been construed to have been not only an acquiescence, but an affirmation of the propriety of the order, upon which later an appeal was based.

(d)—Ignorance of the amendment no excuse.

The fact that respondents' counsel may not have known of the amendment to this order is no excuse for their failure to file specifications on time, nor is there any justification for their shifting the burden of properly conducting the matter to the bankrupt, even though bankrupt knew of the change at the time, which she did not.

In the matter of *United Wall Paper Factories, Inc., vs. Harley M. Hodges,* (C. C. A. 2nd) 70 Fed. (2d) 243, the objecting creditors did not know of the amendment and further claim to have been misled by the referee, and by a local rule, the court held:

"The amendment" (to Order 32) "allowed a week for news of it to percolate; an interval plainly thought adequate to inform those interested. If so, the court must have meant that ignorance should not thereafter be an escape from the requirement and we must enforce that purpose. Indeed, were

this not so, we should have to decide in each case whether the actual interval had been long enough in reason to charge creditors. Was the single month enough which had here elapsed, or were three or six necessary? On what information might creditors rely, other than the official sources? Such inquiries we conceive to be irrelevant; the law is imperative; all are bound at their peril to learn its commands. It will not stop to ask how far those subject to it have in fact learned their content. There may be excuses for failing to comply, but ignorance is not one."

(e)—Bankrupt not required to attend hearing on return day.

To avoid the necessity of reply to respondents we may mention that in the court below respondents insisted that it was the bankrupt's duty to be present on the return day, citing *In re Shanker,* 138 Fed. 862, as authority, and another case inapplicable because based on a local rule. That case relates to the duty of the bankrupt to be present at the *hearing* upon the specifications in opposition pursuant to the provision of Section 7 of the Bankruptcy Act. It may be noted that the appearance is not required on the *return day* of the order to show cause against the discharge, but upon the *hearing.* On such return day specifications may or may not be filed. If filed the time is set for hearing upon the issues raised by the specifications.

We submit therefore, that the bankrupt had no duty to be present on the return day of the order to show cause, and if she did, her absence could not confer upon the District Court an enlarged authority to extend the time to file specifications, if such authority had been taken away. Further, without special objection to the bankrupt's failure to appear or request for her appearance at the time com-

plained of, we submit that the penalty for such absence is not such resulting acquiescence to an order, if improper, as to preclude her from questioning the propriety thereof by appeal.

CONCLUSION.

It is respectfully submitted that the District Court had no authority to extend the time for filing specifications beyond the return day; that the bankrupt cannot be guilty of any conduct which can be construed as an acquiescence, and that by reason of the erroneous decision, the judgment of the Circuit Court of Appeals should be reversed.

Respectfully submitted,

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